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In re Application of:
GUIMBERTEAU, Florence, et al. : DECISION
U.S. Application No.: 10/522,234 :
PCT No.: PCT/FR2003/002384 :
International Filing Date: 28 July 2003 :
Priority Date: 26 July 2002 :
Attorney's Docket No.: 09471.0018 :
For: MICROCAPSULES WITH MODIFIED :
RELEASE OF ACTIVE PRINCIPLES :
WITH LOW SOLUBILITY FOR ORAL :
DELIVERY :

This decision is issued in response to materials filed herein on 09 June 2006, including the petition under 37 CFR 1.47(a).

BACKGROUND

On 28 July 2003, applicants filed international application PCT/FR2003/002384. The application claimed a priority date of 26 July 2002, and it designated the United States. On 05 February 2004, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 26 January 2005.

On 25 January 2005, applicants filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 22 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirement (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 and the surcharge for filing the oath or declaration later than thirty months after the priority date was required.

On 09 June 2006, petitioner filed a response to the Notification Of Missing Requirements, which included the required surcharge payment, a partially executed declaration, and a petition under 37 CFR 1.47(a) seeking acceptance of the declaration without the signature of co-inventor Gerard SOULA, whom petitioner asserts has refused to execute the application.

On 30 August 2006, the DO/EO/US mailed a Notification Of Acceptance (Form PCT/DO/EO/903) indicating that applicants had satisfied the requirements of 35 U.S.C. 371(c) on 09 June 2006. On the same date, a filing receipt was mailed herein, identifying the date under 35 U.S.C. 371(c) as 09 June 2006.

DISCUSSION

The Notification Of Missing Requirements mailed herein on 22 July 2005 stated that the failure to file a proper response within two months would result in abandonment of the application. Pursuant to 37 CFR 1.136(a), this deadline could be extended by a maximum of five months. Thus, the final date for applicants to file a timely response to the Notification Of Missing Requirements, with extension fees, was 22 February 2006.

The present submission was not filed until 09 June 2006, well after expiration of the extendable response period. The 09 June 2006 submission is therefore not a timely response to the Notification Of Missing Requirements mailed 22 July 2005. Accordingly, the present application became abandoned at midnight on 22 August 2005, the date on which a response to the Notification Of Missing Requirements was due.

The Notification Of Acceptance (Form PCT/DO/EO/903) mailed herein on 30 August 2006, based as it was on applicants' purported satisfaction of the requirements of 35 U.S.C. 371(c) in a timely manner, is appropriately vacated.

Because the present application is currently abandoned, the petition under 37 CFR 1.47(a) seeking acceptance of the declaration without the signature of all the inventors is premature and has not been considered on the merits. Such petition can only be considered herein as part of the "required reply" accompanying a petition for revival of the abandoned application, and applicants have not filed such a petition.

It is noted that counsel of record, identified above, did not file the 09 June 2006 submission. A "Statement Under 37 CFR 3.73(b)" and a Power Of Attorney were filed herein on 21 April 2006, attempting to appoint the attorneys who filed the present petition as counsel of record; however, the submission under 37 CFR 3.73(b) was ineffective because it was filed by a partial assignee (see 37 CFR 3.73(b), MPEP section 324(1)(A)).

A courtesy copy of the present decision will be mailed to counsel who filed the petition; however, all further correspondence herein will be addressed solely to the above-listed correspondence address of record.

CONCLUSION

The present application is **ABANDONED** for failure to file a timely response to the Notification Of Missing Requirements mailed 22 July 2005.

The Notification Of Acceptance (Form PCT/DO/EO/903) and filing receipt mailed on 30 August 2006 are hereby **VACATED**.

Because the application is abandoned, the petition under 37 CFR 1.47(a) is **DISMISSED** as moot and has not been considered on the merits.

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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